SUPREME

No.

THE STATE OF CALIFORNIA,

Petitioner,

vs.

PASCUAL [illegible],

Respondent.

RESPONDENT'S BRIEF IN [illegible]

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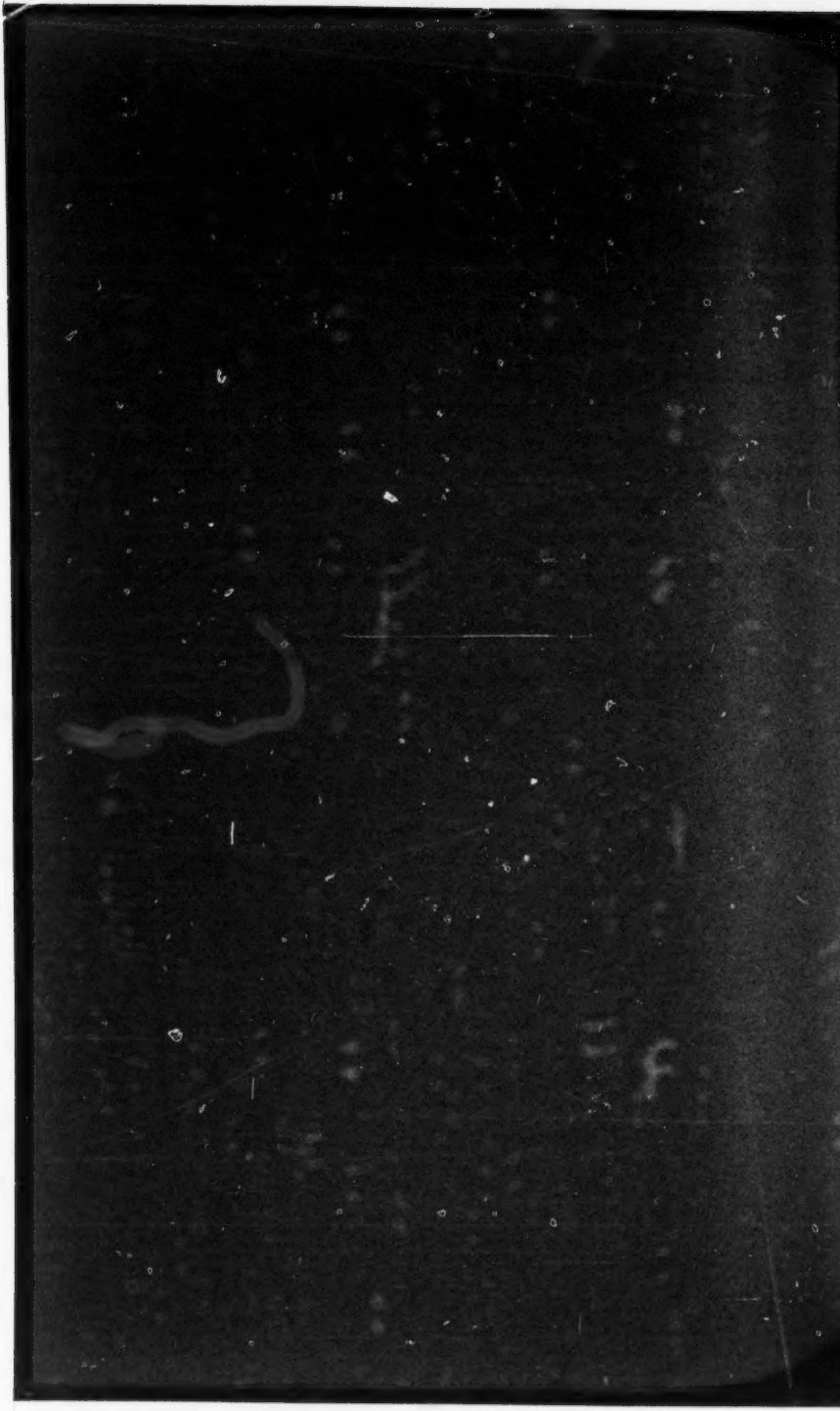

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No._____

THE PURE OIL COMPANY,

Petitioner,

versus

PASCUAL SUAREZ,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW AND JURISDICTION

The District Judge's Order of March 6, 1964, is not reported. The opinion of the Court of Appeals for the Fifth Circuit, affirming the order of the District Court, is reported at 346 F.2d 890, and is set out in full in Petitioner's appendix. Jurisdiction of this Court is asserted under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the 1920 venue definition of "residence" of a corporate shipowner under the Jones Act, 46 U.S.C. 688, shall continue as a common law definition (the state of incorporation), or submit to

the 1948 Congressional definition as enacted in the General Venue Statute, 28 U.S.C. 1391(c), providing that for venue purposes a corporation's residence shall be any judicial district in which it is doing business, as held by the Fifth Circuit?

STATUTES INVOLVED

46 U.S.C. 688:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. **Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.**" (Emphasis supplied).

28 U.S.C. 1391(c):

"A corporation may be sued in any judicial district in which it is incorporated or licensed to do

business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

ARGUMENT

Respondent does not minimize the fact that the result reached by the Fifth Circuit is diametrically opposed to the result reached by the Court of Appeals for the Third Circuit in **Leith v. Oil Transport Co.**, 321 F.2d 591 (1963).

However, the Fifth Circuit made sufficient distinction in the fact situations of the two cases to warrant a denial of this petition. The Third Circuit noted in its opinion in **Leith** that the only contacts the law suit had in the Western District of Pennsylvania were the presence of one of the Defendant's barges, making it amenable to process by service of a summons and complaint on the master of the barge.

In the cause at bar, it is noted that Pat Suarez was born in Tampa, Florida, and lived there all of his life; he was employed in Florida, and the Defendant engages in substantial business in Florida, and is registered with the Secretary of State of Florida to do business in Florida.

Suarez filed his law suit in Florida, with its now famous current trial calendars. Petitioner moved to transfer the case to Chicago, with its backlog of six to nine years.

Neither Suarez nor his case have any connection with Chicago, except that his employer chooses to main-

tain its principal office in Chicago, the sole ground forwarded for transfer of venue to Chicago. The motion was denied.

Congress never intended that a seaman chase his employer 2,000 miles to file a law suit, and bring with him his witnesses, doctors and lawyers to fight for a recovery.

If, as contended by Respondent, Congress ever created such an obviously unintended result, it was just as obviously corrected 1948 by enactment of the General Venue Statute, creating a new definition of residence for venue purposes. The statutory definition, 28 U.S.C. 1391(c), supersedes the common-law definition of corporate residence. **Suttle v. Reich Bros. Constr. Co.**, 333 U.S. 163 (1948); **Shaw v. Quincy Mining Co.**, 145 U.S. 444 (1892).

CONCLUSION

It is respectfully submitted that the Court of Appeals for the Fifth Circuit was correct in holding that the previously undefined term "residence" for venue purposes under the Jones Act is now defined by the General Venue Statute, to further enforce the beneficial purpose of the Act as remedial legislation.

Pat Suarez should be permitted to get his case to a jury just as soon as possible, in the most expedient manner available.

The Petition should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of Respondent's Brief in Opposition was mailed to Eberhard P. Deutsch, Esq., 1700 Hibernia Bank Building, New Orleans, La., Attorney for Petitioner, this_____day of November, 1965.

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ARTHUR ROTH